

16

MIED (Rev. 03/11) Prisoner Civil Rights Complaint

Official Use Only		
Case Number	Judge	Magistrate Judge

Case: 5:18-cv-12488
 Judge: Levy, Judith E.
 MJ: Whalen, R. Steven
 Filed: 08-10-2018 At 02:17 PM
 PRIS HARRIS v. BUSKIRK ET AL. (EK)

PRISONER CIVIL RIGHTS COMPLAINT

This form is for use by state prisoners filing under 42 U.S.C. § 1983 and federal prisoners filing pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

Plaintiff's Information			
Name Dave Harris		Prisoner No. 527986	
Place of Confinement Saginaw Regional Facility			
Street 9625 Pierce Road	City Freeland	State MI.	Zip Code 48623
Are there additional plaintiffs? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
If yes, any additional plaintiffs to this action should be listed on a separate 8½" x 11" sheet of paper and securely attached to the back of this complaint. <u>You must provide names, prisoner numbers and addresses for all plaintiffs.</u>			

Defendant's Information			
Name Joshua A. Buskirk		Position Physician Assistant	
Street/P.O. Box 9625 Pierce Road	City Freeland	State MI.	Zip Code 48623
Are you suing this defendant in his/her: <input type="checkbox"/> Personal Capacity <input type="checkbox"/> Official Capacity <input checked="" type="checkbox"/> Both Capacities			
Are you suing more than one defendant? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
If yes, any additional defendants to this action should be listed on a separate 8½" x 11" sheet of paper and securely attached to the back of this complaint. <u>You must provide their names, positions, current addresses and the capacity (personal, official or both) in which you are suing them.</u>			

I. PREVIOUS LAWSUITS

Have you filed any other lawsuits in state or federal court relating to your imprisonment?

☒ Yes ☐ No

If "Yes," complete the following section. If "No," proceed to Part II.

Please list all prior civil actions or appeals that you have filed in federal court while you have been incarcerated.

Docket or Case Number:	2:15-GV-126
Name of Court:	U.S. District Court - E.D. Michigan
Parties (Caption or Name of Case):	DAVE HARRIS V. THOMAS WINN, WARDEN
Disposition:	Habeas Corpus in Stay of Proceeding and Abeyance

Docket or Case Number:	N/A
Name of Court:	N/A
Parties (Caption or Name of Case):	N/A
Disposition:	N/A

Docket or Case Number:	N/A
Name of Court:	N/A
Parties (Caption or Name of Case):	N/A
Disposition:	N/A

Any additional civil actions should be listed on a separate sheet of 8½" x11" paper and securely attached to the back of this complaint.

II. STATEMENT OF FACTS

State here, as briefly as possible, the facts of your case. Describe how each defendant is involved. Include the names of other people, dates and places involved in the incident. Do not give any legal arguments or cite any cases or statutes.

See Attached Pages

III. STATEMENT OF CLAIMS

State what rights under the Constitution, laws, or treaties of the United States have been violated, and be specific. Set forth each claim in a separate paragraph. If you intend to allege several related claims, number and set forth each claim on a separate 8½" x 11" sheet of paper and securely attach the papers to the back of this complaint.

EIGHTH AMENDMENT, U.S. CONSTITUTION

IV. RELIEF

State briefly and exactly what you want the Court to do for you.

Plaintiff Dave Harris request that he be awarded \$2.5 Million dollars
for mental and emotional distress damages; 2.5 million dollars for
pain and suffering and \$150,000 dollars for punitive damages.

MIED (Rev. 03/11) Prisoner Civil Rights Complaint

~~Recoup ALL filing fees, to include copy cost, legal supplies~~
~~and postage. Awarding attorney fees if applicable.~~
~~See Relief on page 4 addition pages.~~

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed (signed) on _____ (date).

Signature of Plaintiff

II. STATEMENT OF FACTS

- 1 DEFENDANT JOSHUA BUSKIRK MP2 as Defendant #1
Saginaw Correctional Facility
9625 Pierce Road - MDOC
Freeland, Michigan 48623

Plaintiff contends that the Defendant Joshua Buskirk from the period of 9/17/2017 until 1/19/2018, acted with deliberate indifference to his medical needs. That said Defendant failed to properly treat the Plaintiff and under the standards of a reasonable person left Plaintiff untreated until his left leg became swollen and painful. This failure to treat caused an urgent request for Plaintiff to be treated by the Correctional Staff at Saginaw Correctional Facility. Plaintiff was thereafter taken to St. Mary's of Michigan hospital and diagnosed Cellulitis. Plaintiff Harris is a cancer patient, Honorably Discharged U.S. Vietnam era veteran currently housing in the SRF Veteran Unit. Plaintiff also has a long standing medical history from the military which he has been receiving care and treatment from the VA for decades. Defendant Johua Buskirk knew or should have known of Plaintiff's treatment history and did not treat him per his charted known illness. Plaintiff complained numerous times to the Saginaw Health Service Department of his constant pain and visible sweelling in his extremities.

2. DEFENDANT CARLA GROSS RN-13 (ACTING) as Defendant #2
Saginaw Correctional Facility
9625 Pierce Road - MDOC
Freeland, Michigan 48623

Plaintiff contends that Carla Gross - Registered Nurse from the period of 10/19/17 until 2/21/18, was the Respondent for numerous MDOC Grievances filed regarding the unprofessional and lack of treatment in this matter. Grievance No. SRF/2018/02/0117/12D1; SRF/2017/10/1097/12D1; SRF 2017/10/1122/12D1. Defendant's responses where not performed by direct knowledge and evaluation but mere review of the medical entries made by Defendant Buskirk MP2.

II. STATEMENT OF FACTS

Defendant Gross' ruling in each of the cited SRF Grievances do not reflect the actual failure to act by Defendant Buskirk, as Plaintiff willfully omits pain evaluation by the Plaintiff and direct observation as complained of in his stated grievances.

The record on 9/22/17, supports that Plaintiff appeared at SRF health service reported pain in his side and blood in his urine and no action was taken though reported to nursing staff. The nurse of duty simply advised Plaintiff to address his side pains and bleeding at his upcoming appointment 5 days later on 9/27/17. On 9/24/17, the inmates in the unit informed staff in housing unit 800 that Plaintiff Harris was in pain and was unable to stand or walk. Staff of 800 unit brought Plaintiff to the clinic in a wheelchair for treatment. Deliberate indifference and lack of medical care was evident but not found by this Defendant. Defendant knew or should have known that Plaintiff had co-occurring physical problems but did not cited that Plaintiff was improperly treated per his known conditions.

3. Sue McCauley HUM (Nurse) as Defendant #3
Saginaw Correctional Facility
9625 Pierce Road - MDOC
Freeland, Michigan 48623

Plaintiff contends that Sue McCauley - Health Unit Manager from the period of 10/19/17 until 2/21/18, was the Reviewer of each of the submitted grievances by the Plaintiff. Defendant McCauley acting as the Health Unit Manager was addressed by Plaintiff seeking redress and assistance for the lack of care, improper care and the deliberate indifference claimed by Plaintiff against Defendant #1 (Buskirk). This correspondence written on 1/20/18 was never address by HUM McCauley to date pertaining to SRF Grievance NO. SRF/2018/02/0117/12D1.

II. STATEMENT OF FACTS

Defendant #3 is the overall supervisor of Defendants #1 & #2, and directly responsible for these Defendants compliance with medical treatment of clients, and compliance with the DOC's policies, operating procedures and compliance with standards of humane treatment of clients/prisoners. Defendant #3 biasness is demonstrated by her concurrences with Defendant #2 review of his claim and denying the fact that Plaintiff was not properly treated. Had Defendant acted in a reasonable time Plaintiff would not suffered extended terms of pain, the actual injuries noted and mental and emotional distress.

4. Patrica Lamb, RN BSN - MDOC Central Office Respondent as Defendant #4
Michigan Department of Corrections
P.O. Box 30003
Grandview Plaza
Lansing, Michigan 48909

Plaintiff Harris contends that Patricia Lamb - RN BSN, acting as the MDOC's Central Office Respondent, abused her discretion and is also liable for the acts and omissions of Defendants #1, #2 and #3. Defendant lamb's position is to evaluate medical claims against staff employed by the MDOC as contractual employees. In all the MDOC Grievance submitted to exhaustion to Step III, Defendant Lamb was the Respondent for the DOC at Central Office level in Lansing. Contrary to the documentary evidence submitted by the Plaintiff, Lamb only found a single act of deficient performance - that an earlier assessment of grievant's 9/22/17 report of side pain and bleeding would have been preferred. Grievance SRF/2017/10/1097/12D1 dtd: 9/8/2017.

Defendant Lamb's failure to thoroughly review Plaintiff's file and described symptomology caused further harm because Plaintiff adequately described multiple co-occurring medical problems which were not each independently addressed supporting an unreasonable lack of care from these Qualified Health Professionals. I reasonable person trained in medical would have focused on the medical claims of pain and lack of mobility rather than a layperson lack of usage of medical terms. This is the association of the 8th Amendment violation.

II. STATEMENT OF FACTS

5. JANE DOE - NURSE as Defendant #5
Saginaw Correctional Facility
9625 Pierce Road - MDOC
Freeland, Michigan 48623

Plaintiff Harris contends that JANE DOE - Nurse as Defendant #5, on 9/19/17, on said date did not report to an appointment due to being affected by the pain in his lower back and leg/hip. The pain was so great that it caused restlessness and I stayed awake from 9/18/17 to the early morning hours of 9/19/17. At the time of the scheduled appointment I was unable to walk and advised staff that I was sick and in pain. On 9/22/17, I kited Health service about pain in my side and bleeding. The nurse (Defendant #5) advised me to discuss my pain and the bleeding at an upcoming appointment 5 days later. On 9/24/17, my condition worsened and the bleeding still persisted, the custody staff rushed me to medical because I couldn't stand/wlak and visibly was in pain. I talked to the housing staff about health service decling to immediately see me and advice to wait until 9/27/17. When I was seen at health service Defendant #1 was called via phone and directed the nursing staff to provide me with motrin. Plaintiff refused the motrin because motrins causes a bad reaction in my stomache. Per my medical records I was on [hydrocodone] for pain. Plaintiff did not refuse treatment but rather complained that motrin had adverse side effects which I had informed my provided why motrin should not be prescribed to me for pain. Defendant #5 did not inform Defendant #1 nor did she chart my reason for refusal. A reasonably competent QHP would have advised the PA (Defendant #1) and made the proper notation of the current medications Plaintiff had been prescribed and was taking for pain.

RELIEF REQUESTED:

WHEREFORE, Dave Harris Plaintiff In Pro Per moves that this Court GRANT Summary Judgment in Plaintiff's favor, or order responsive pleadings by the Defendants, allow Plaintiff to submit and brief these claims, offer evidence and exhaustion and/or show cause why relief should be GRANTED; appointment of Counsel as these 8th Amendment violations are complex and Plaintiff is untrained in law, and Medical Expert(s) opinion may be required to rebut the Defendants.

Date: ____/____/2018

1s/ Dave Harris
Dave Harris #527986
Plaintiff In Pro Per

U.S. POSTAGE
FITNEY BOWES
ZIP 48623 \$ 007.25
0200358709 AUG 09 2018

RECEIVED
AUG 10 2018
CLERK'S OFFICE
U.S. DISTRICT COURT

Clerk of U.S. District Court
Eastern District of Michigan
Theodore W. U.S. Courthouse
231 W. Main Street
Detroit, Michigan 48226

Ph

U.S. MARSHALS

Dave Harris # 527986
Saginaw Correctional Facility
9625 Pierce Rd.
Free land, Mich 48623

CIVIL COVER SHEET FOR PRISONER CASES

Case No. <u>18-12488</u>		Judge: <u>Judith E. Levy</u>	Magistrate Judge: <u>R. Steven Whalen</u>
Name of 1st Listed Plaintiff/Petitioner: DAVE HARRIS		Name of 1st Listed Defendant/Respondent: JOSHUA A. BUSKIRK ET AL	
Inmate Number: <u>527986</u>		Additional Information:	
Plaintiff/Petitioner's Attorney and Address Information:			
Correctional Facility: Saginaw Correctional Facility 9625 Pierce Road Freeland, MI 48623 SAGINAW COUNTY			

BASIS OF JURISDICTION

- ☐ 2 U.S. Government Defendant
☒ 3 Federal Question

ORIGIN

- ☒ 1 Original Proceeding
☐ 5 Transferred from Another District Court
☐ Other:

NATURE OF SUIT

- ☐ 530 Habeas Corpus
☐ 540 Mandamus
☒ 550 Civil Rights
☐ 555 Prison Conditions

FEE STATUS

- ☒ IFP *In Forma Pauperis*
☐ PD Paid

PURSUANT TO LOCAL RULE 83.11**1. Is this a case that has been previously dismissed?**

- ☐ Yes ☒ No

> If yes, give the following information:

Court: _____

Case No: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

- ☐ Yes ☒ No

> If yes, give the following information:

Court: _____

Case No: _____

Judge: _____